

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

EDGARDO L. BIBILONI DEL VALLE,

Plaintiff,

v.

CIVIL NO. 07-1362 (RLA)

THE COMMONWEALTH OF PUERTO  
RICO, et al.,

Defendants.

**ORDER DENYING MOTION TO DISMISS**  
**FILED BY THE COMMONWEALTH OF PUERTO RICO**  
**AND THE P.R. POLICE DEPARTMENT**

The COMMONWEALTH OF PUERTO RICO ("COMMONWEALTH") and the P.R. POLICE DEPARTMENT ("PR-PD") have moved the court to dismiss the monetary damages claims asserted against them under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, 2000e-3(a), pursuant to the immunity afforded by the Eleventh Amendment to the United States Constitution. Movants further request that the supplemental causes of action plead in the complaint be likewise dismissed.

The Court having reviewed the memoranda submitted by the parties as well as the applicable legal precedent hereby finds the request unwarranted on both counts.

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**Eleventh Amendment**

The Eleventh Amendment to the United States Constitution<sup>1</sup> bars the commencement and prosecution in federal court of suits claiming damages brought against any state, including Puerto Rico, without its consent. Fresenius Med. Care Cardiovascular Res., Inc. v. Puerto Rico and Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56, 61 (1<sup>st</sup> Cir. 2003); Futura Dev. v. Estado Libre Asociado, 144 F.3d 7, 12-13 (1<sup>st</sup> Cir. 1998); In re San Juan Dupont Plaza Hotel Fire Lit., 888 F.2d 940, 942 (1<sup>st</sup> Cir. 1989); Ramírez v. P.R. Fire Serv., 715 F.2d 694, 697 (1<sup>st</sup> Cir. 1983); Fernández v. Chardón, 681 F.2d 42, 59 n.13 (1<sup>st</sup> Cir. 1982).

Eleventh Amendment immunity protection is extended to governmental entities which are deemed an arm or alter ego of the state. Royal Caribbean Corp. v. Puerto Rico Ports Auth., 973 F.2d 8, 9-10 (1<sup>st</sup> Cir. 1992); In re San Juan Dupont Plaza Hotel Fire Lit., 888 F.2d at 943-44.

Additionally, actions for damages filed against government officials in their official capacity are deemed actions against the state since the real party in interest is the government and not the

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<sup>1</sup> The Eleventh Amendment provides:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

CIVIL NO. 07-1362 (RLA)

Page 3

official. Pennhurst St. Sch. & Hosp. v. Halderman, 465 U.S. 89, 101-102, 104 S.Ct. 900, 908-909, 79 L.Ed.2d 67, 79 (1984). Hence, Eleventh Amendment immunity applies in these cases even though the state has not been named in the suit. Hafer v. Melo, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). Suits against officers in their official capacity seeking monetary relief are tantamount to actions directly against the state. Will v. Mich. Dep't of St. Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Thus, no claims for damages may be asserted against a state agency or a state official acting in his official capacity in federal court under the Eleventh Amendment immunity. See, i.e., Destek Gp., Inc. v. St. of New Hampshire Pub. Utilities Com'n, 318 F.3d 32, 40 (1<sup>st</sup> Cir. 2003); Wang v. New Hampshire Bd. of Registration in Med., 55 F.3d 698, 700-701 (1<sup>st</sup> Cir. 1995).

Plaintiffs having failed to contest defendants' allegations, we deem the PR-PD to be an arm of the state and consequently, also immune from suit in the federal courts by virtue of the Eleventh Amendment.

It has been consistently held that in enacting Title VII Congress in effect abrogated the state's Eleventh Amendment immunity. Crumpacker v. Kansas Dep't of Human Res., 338 F.3d 1163, 1169 (10<sup>th</sup> Cir. 2003); Nanda v. Bd. of Trustees, 303 F.3d 817, 831 (7<sup>th</sup> Cir. 2002); Okruhlik v. Univ. of Arkansas, 255 F.3d 615, 627 (8<sup>th</sup> Cir. 2001); In re Employment Discrimination Litig., 198 F.3d 1305, 1324

CIVIL NO. 07-1362 (RLA)

Page 4

(11<sup>th</sup> Cir. 1999); Torres-Santiago v. Alcaraz-Emmanuelli, 553 F.Supp.2d 75, 82 (D.P.R. 2008).

Accordingly, we reject defendants' argument that Title VII claims against the COMMONWEALTH and the state agency are precluded by the sovereign immunity shield.

### Supplemental Claims

Defendants' argument on this particular point is straightforward: absent Title VII jurisdiction, the supplemental claims should be dismissed.

Apart from the fact that our ruling today has turned this request moot, it should also be noted that "[p]laintiff never claimed supplemental jurisdiction over the Commonwealth of Puerto Rico... [or] the Police Department of Puerto Rico."<sup>2</sup>

### Conclusion

Based on the foregoing, the Motion to Dismiss filed by the COMMONWEALTH and the PR-PD (docket No. **31**)<sup>3</sup> is hereby **DENIED**.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 14<sup>th</sup> day of August, 2008.

S/Raymond L. Acosta  
RAYMOND L. ACOSTA  
United States District Judge

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<sup>2</sup> Plaintiff's Opposition to Motion to Dismiss (docket No. 34) p. 13.

<sup>3</sup> See Opposition to Motion to Dismiss (docket No. **34**).